

REMARKS

This amendment is in response to the office action dated August 7, 1998. In the office action, claim 25 was allowed, claims 3, 5-12, 14-15 and 23-24 were objected to and claims 1-2, 4, 13 and 16-22 were rejected. A detailed discussion of each item in the office action follows.

THE 102(b) REJECTION

In items 2-4 of the office action, claims 1-2, 4, 18, 20 and 22 were rejected under 35 U.S.C. 102(b), as being anticipated by Peterson. Independent claims 1 and 22, from which the other claims depend, have been amended.

Peterson does not anticipate Applicants' invention for the following reasons, as explained more fully above:

1. Peterson is not known or capable of performing the function of this invention, nor does it teach the disclosure of this invention.
2. Peterson does not disclose the purpose, means or mechanism that this invention discloses.
3. Peterson does not solve the problems that this invention solves.
4. Peterson does not disclose each and every element of this invention.

1. **Peterson is not known or capable of performing the function of this invention, nor does it teach the disclosure of this invention.**

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There is not anticipation by a prior patent not known or recognized as being capable of performing the function of the patented device, but rather the prior patent must itself do the teaching. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 221 U.S.P.Q. 385 (1984); Edstrom-Carson & Co. v. Onsrud Machine Works, Inc., 129 U.S.P.Q. 457.

Peterson is not capable of functioning the same as this invention because Peterson is designed to pivot on a single longitudinal axis and is rigidly held in that axis plane. The structure disclosed by Peterson is not designed, nor is it capable of, pivoting on both a longitudinal axis as well as rotating laterally in relation to the aircraft keel. Peterson, in fact teaches against the dual axis pivoting because its pivot mechanism is locked into a single axis.

2. Peterson does not disclose the purpose, means or mechanism that this invention discloses.

There is no anticipation where a reference does not disclose the purpose, means and mechanism for accomplishing the instant invention but rather is restricted to a limited and different means. Sperry Products, Inc. v. Aluminum Company of America, 120 U.S.P.Q. 362.

The goals or objects of Applicant's invention, without limitation, are to allow pivoting the wings on both a longitudinal and a lateral axis for increased performance.

Peterson cannot meet these objects to the extent that Applicant's invention can, because the Peterson structure is specifically designed to pivot only on the longitudinal axis.

Further, the mechanisms by which this invention accomplishes the forenamed objects is substantially different from Peterson. This invention includes a structural means to simultaneously or independently pivot in either or both axis.

3. Peterson does not solve the problems that this invention solves.

There is no anticipation if a prior patent does not solve the problem(s) which the subsequent patent successfully solves. Technical Development Corporation v. Servo Corporation of America, 125 U.S.P.Q. 133.

Applicant's invention provides improved performance and maneuverability due to its ability to pivot the wings on two axis. In fact, the invention allows each wing to pivot independent of the other wing.

4. **Peterson does not disclose each and every element of this invention.**

There is no anticipation if the reference does not disclose each and every element of the claimed invention. SSIH Equipment S.A. v. United States International Trade Commission, 718 F.2d 365, 218 U.S.P.Q. 678 (1983).

Peterson does not disclose a means to rotate the wings in more than one axis, or independent of one another.

The Peterson patent does not disclose any structural means to rotate the wings in more than one axis.

For all the reasons set forth above, Applicants' invention is not anticipated by the Peterson reference. Further, to more specifically define this aspect of the invention, independent claims 1 and 22 were amended to more clearly state dual axis pivoting.

THE ALLOWABLE SUBJECT MATTER

Regarding item 5 of the office action, the Examiner indicated that claims 3, 5-12, 14-15 and 23-24 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112 and to include all of the limitations of the base claim and any intervening claims.

Claim 3, 5, 14 and 23 have been so amended to independent form.

Applicant's Attorney believes that due to the amendment, these claims are now in condition for allowance. In addition, claim 25 was previously allowed.

THE 103 REJECTION

In items 6-10 of the office action, claims 13, 16-17, 19 and 21 were rejected under 35 U.S.C. 103, as being unpatentable over Peterson in light of Williams et al and Saholt. Claims 13, 16-17, 19 and 21 depend from newly amended claim 1. Should claim 1 be held allowable, then claims 13, 16-17, 19 and 21 will also be allowable. Applicant's Attorney believes that due to the amendment to independent claim 1, this basis of rejection has been overcome.

CONCLUSION

Applicant's Attorney thanks the Examiner for his help in prosecuting this invention. In response to the office action, Applicant's Attorney has amended 1, 3, 5, 14, and 22-23. Applicant's Attorney has been careful to avoid the introduction of new matter. A separate petition and fee for a two month extension of time is attached. Applicant's Attorney believes that all items in the office action dated August 7, 1998 have been addressed, and respectfully requests the Examiner to reconsider the claims, as amended, with a view towards allowance. Applicant's Attorney further invites the Examiner to contact Applicant's Attorney for a telephonic interview at the above listed number if the Examiner believes that prosecution of the application can be furthered by so doing.

Respectfully submitted,

By: 

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